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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/727,915
Filing Date: December 04, 2003
Appellant(s): SELIGMANN ET AL.

David M. Lazoff
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/07/2008 appealing from the Office action mailed 4/16/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,813,264

Vassilovski

11-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 29-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Vassilovski (6,813,264).
3. Regarding claim 29, Vassilovski disclosed selecting one of a plurality of physical media for sending a message from a first telecommunications terminal to a second telecommunications terminal (column 2, lines 41-51 and column 3, line 45 – column 4,

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line 3), based on the semantic content of said message (column 5, lines 20-30 and Fig. 1-2).

4. Regarding claims 30, 33, 36, and 39, Vassilovski disclosed where each of said physical layer protocols is associated with a respective degree of security (column 2, line 60 – column 3, line 8 and column 2, lines 18-26), and wherein the selection is also based on said respective degrees of security (column 2, line 60 – column 3, line 8 and column 2, lines 18-26).

5. Regarding claims 31, 34, 37, and 40, Vassilovski disclosed where the selection is also based on the user to whom said message is directed (column 2, lines 41-51).

6. Regarding claim 32, Vassilovski disclosed selecting one of a plurality of physical layer protocols for sending a message from a first telecommunications terminal to a second telecommunications terminal (column 2, lines 41-51 and column 3, line 45 – column 4, line 3), based on the semantic content of said message (column 5, lines 20-30 and Fig. 1-2).

7. Regarding claim 35, Vassilovski disclosed selecting one of a plurality of medium access controls for sending a message from a first telecommunications terminal to a second telecommunications terminal (column 2, lines 41-51 and column 3, line 45 – column 4, line 3), based on the semantic content of said message (column 5, lines 20-30 and Fig. 1-2).

8. Regarding claim 38, Vassilovski disclosed selecting one of a plurality of networks for sending a message from a first telecommunications terminal to a second telecommunications terminal (column 2, lines 41-51 and column 3, line 45 – column 4,

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line 3), based on the semantic content of said message (column 5, lines 20-30 and Fig. 1-2).

9. Regarding claim 41, Vassilovski disclosed selecting one of a plurality of physical media for sending a message based on the user to whom said message is directed (column 2, lines 41-51).

10. Regarding claims 42, 45, 48, and 51, Vassilovski disclosed where each of said physical media is associated with a respective degree of security (column 2, line 60 – column 3, line 8 and column 2, lines 18-26), and wherein the selection is also based on said respective degrees of security (column 2, line 60 – column 3, line 8 and column 2, lines 18-26).

11. Regarding claims 43, 46, 49, and 52, Vassilovski disclosed where the selection is also based on the user who sends said message (column 2, lines 41-51).

12. Regarding claim 44, Vassilovski disclosed selecting one of a plurality of physical layer protocols for sending a message based on the user to whom said message is directed (column 2, lines 41-51).

13. Regarding claim 47, Vassilovski disclosed selecting one of a plurality of medium access controls for sending a message based on the user to whom said message is directed (column 2, lines 41-51 and column 3, line 45 – column 4, line 3).

14. Regarding claim 50, Vassilovski disclosed selecting one of a plurality of networks for sending a message based on the user to whom said message is directed (column 2, lines 41-51 and column 3, line 45 – column 4, line 3).

(10) Response to Argument

In the remarks, applicant argued in substance that:

(A) Prior art does not teach selecting a physical media for sending a message based on the message's semantic content.

As to point (A), the Examiner respectfully disagrees. The issue is whether or not Vassilovski's selecting a physical media (*i.e., public Internet or PSTN network*) for sending a message based on the message contents being encrypted/unencrypted anticipates the claimed limitation "based on the message's semantic content."

The Applicant argues that the term semantic means specifically "the meaning of the contents of the message" (*see Appeal Brief page 13*). However, the Examiner notes that the Applicant's specification provides no specific definition for the term "semantic." the Examiner can only find a single mention of term semantic in the Applicants' detailed description at paragraph 0037. Therefore the Applicant has not acted as his own lexicographer, and the claim term "semantic" should be construed using the broadest reasonable interpretation standard (*see MPEP 2111*). The term "semantic" should be defined as of, pertaining to, or relating to meaning.

Vassilovski teaches a system that chooses to send a message over the public Internet or over the more secure PSTN network based on a determination (column 5, lines 21-27 and Fig. 1 and 2 item 31). In one embodiment, Vassilovski teaches determining if an message is encrypted and if the message is encrypted the system

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selects the PSTN network (*physical media*) for transmission. Alternatively, if Vassilovski's system determines that the message is unencrypted then the public Internet (*physical media*) is chosen for transmitting the message. Vassilovski implements this type of system in order to avoid sending encrypted calls over the public Internet (column 5, lines 21-27).

The Examiner maintains the position that selecting a network for sending a message based on whether the message's contents are encrypted or unencrypted anticipates the claimed limitation of sending a message based on the message's semantic content. If a message's content is encrypted or unencrypted, the meaning of the message is either discernible or not. For example, if a message is unencrypted then anyone can determine the meaning of the message's contents; and if a message is encrypted then only someone that can decrypt the message can determine the message's meaning (e.g., *the recipient with the decryption key*). The status of the message as encrypted is certainly *related to the meaning* of the message. Vassilovski therefore teaches a method wherein the physical media is selected based on the semantic meaning of the message.

If the Applicants intend that the claims be limited to a method that analyzes the contents of each message to determine the message's actual meaning and uses that information to select the physical media for transmission then the Applicants could have amended the claims accordingly. The Examiner notes that choosing a transmission path based merely on information related to the meaning of the message is broader

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than choosing a transmission path based on the actual meaning of the contents of the message.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/B. F. F./
Bradford F. Fritz
Examiner, Art Unit 2441

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2442

Conferees:

/Andrew Caldwell/
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Primary Examiner, Art Unit 2454